



40000-0003 (50P4201)

Serial No.: 09/711,325

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application: Robert A. Unger

Examiner: NALEVANKO, Christopher R.

Application No.: 09/711,325

Group Art Unit: 2611

Filed: November 13, 2000

Title: "Method and System for Minimizing the Time Required to Acquire a Control Channel of a Cable Television Signal with a Set-Top Unit"

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on November 16, 2004.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provision of 37 CFR 1.136 (a) apply.

() (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: CFR 1.17(a)-(d)) for the total number of months checked below:

() one month \$120.00
() two months \$450.00
() three months \$1020.00
() four months \$1590.00

() The extension fee has already been filed in this application

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant had inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account **18-0013/40000-0003** the sum of **\$500.00**. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 18-0013 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 18-0013 under CFR 1.16 through 1.21 inclusive, and any other section in the Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MS Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date of Deposit: **January 18, 2005**

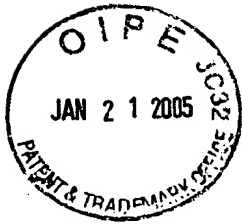
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Respectfully submitted,

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Date: January 18, 2005



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Patent Application of

Robert A. Unger

Application No. 09/711,325

Filed: November 13, 2000

For: Method and System for Minimizing
the Time Required to Acquire a
Control Channel of a Cable
Television Signal with a Set-Top
Unit

Group Art Unit: 2611

Examiner: Nalevanko, Christopher R.

APPEAL BRIEF

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Sir:

This is an Appeal Brief under Rule 41.37 appealing the final decision of the Primary Examiner dated June 16, 2004. Each of the topics required by Rule 41.37 is presented herewith and is labeled appropriately.

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I. Real Party in Interest

The present application has been assigned to Sony Corporation of Tokyo, Japan and Sony Electronics, Inc. of San Jose, California (collectively hereinafter “Sony”). Consequently, Sony is the real party in interest in the present appeal.

II. Related Appeals and Interferences

There are no appeals or interferences related to the present application of which the Appellant is aware.

III. Status of Claims

Claims 3-8, 11-16, 18, 19 and 21-28 are currently pending in the application and all stand finally rejected. Claims 1, 2, 9, 10, 17 and 20 have been cancelled. Appellant appeals from the final rejection of claims 3-8, 11-16, 18, 19 and 21-28, which claims are presented in the Appendix.

IV. Status of Amendments

Following the final Office Action of June 16, 2004, Appellant filed a first after-final response on August 20, 2004. In that amendment, a number of claims were rewritten as independent claims without any substantive change in scope or subject matter. Claims 3, 6, 11, 14, 18, 19, 21 and 22 were so amended. Claims 1, 2, 9, 10, 17 and 20 were cancelled.

In an Advisory Action dated November 2, 2004, the Examiner indicated that the after-final amendment of June 16, 2004 would be entered on appeal. Consequently, Appellant considers that the amendment of June 16, 2004 has now been entered. Therefore, the Claims

Appendix attached hereto lists the claims as amended in the after-final amendment of June 16, 2004.

Subsequently, Appellant filed a second after-final response on December 13, 2004. This response made no amendments to the application. Therefore, its entry or non-entry is immaterial to the form of the claims presented by this appeal. Appellant has not yet received an Action in response to Appellant's second after-final response of December 13, 2004.

V. Summary of Claimed Subject Matter

Typical set-top units have a control channel tuner which is used to tune the control channel from within the composite signal received over the cable television system. The data of the control channel is the provided by the control channel tuner to the set-top unit's circuitry. Conventionally, in order to locate a control channel when a new set-top unit is first connected to a cable system, the control channel tuner in the set-top unit scans through the entire frequency band that might contain the control channel(s) until the control channel(s) is located. This involves a brute force search which requires stopping and testing each possible frequency. (Appellant's spec., p. 2, line 29 to p. 3, line 7).

Consequently, this search for the control channel requires a period of time during which the set-top unit cannot be used to watch television or provide any other services of the cable system to a subscriber. Consequently, there is a need in the art for an improved method and system of locating the control channel of a cable television system so as to minimize the time the set-top unit must spend searching for the control channel during which time other functions of the set-top unit are not available. (Appellant's spec., p. 3, lines 8-14).

This is achieved as described by Appellant's specification. Referring to Appellant's Fig. 1, the otherwise idle primary tuner (102) can be used to minimize the time required to

locate the control channel. When the set-top unit (100) must acquire the control channel, the processor (104) controls both the control channel tuner (101) and the primary tuner (102) concurrently to search the available frequency band for the control channel. With two tuners searching the frequency band, the control channel can be identified more quickly.

(Appellant's spec., p. 7, lines 10-15). Once either tuner has located a control channel, the processor (104) controls the control channel tuner (101) to tune and lock to the frequency of that control channel so that the set-top unit (100) can verify the control channel and provide full service to the user.

There are a number of equivalent search patterns for the tuners (101, 102) to cover the frequency band within which the control channel will be found. For example, one tuner (101 or 102) may begin checking frequencies at one end of the band, the other tuner starting at the other end of the band, both checking frequencies closer and closer to the center of the band until the control channel is found. Alternatively, one tuner may start at one end of the band and check frequencies toward the center of the band, while the other tuner starts at the middle of the band and checks frequencies toward the other end of the band. Any scheme for dividing the applicable frequency band between the two tuners is within the scope of the present application. (Appellant's spec., p. 7, line 29 to p. 8, line 8).

In an alternative approach, the programming tuner or tuners are used to located candidate frequencies which are then checked by the control channel tuner to locate the control channel. With reference to Fig. 4, the frequency band to be searched is divided among the programming tuners, is multiple programming tuners are available in the set-top unit (404). The programming tuner(s), under the control of the processor, then parse through the frequencies assigned to each (405). The tuners merely note at which frequencies strong signals are received, a spectrum analysis. Demodulation is not required or important. This

approach places fewer demands on the processor. (Appellant's spec., p. 10, line 22 to p. 11, line 4).

The frequencies carrying active or strong signals are identified to the processor by the programming tuner(s) (406). The processor then controls the control channel tuner to tune the frequencies carrying active signals as identified by the spectrum scan performed by the programming tuner(s) (407). Hopefully, one of the active signals identified and tuned with the control channel tuner will prove to be the control channel. If so, the control channel tuner is locked to the control channel. In this way, the time required to find the control channel can be reduced because the control channel tuner only tunes and samples frequencies carrying active signals as identified by the programming tuner(s). (Appellant's spec., p. 11, lines 5-15).

VI. Grounds of Rejection to be Reviewed on Appeal

In the final Office Action, the following rejections were made:

(A) Claims 1, 3-9 and 11-29 were rejected as unpatentable under 35 U.S.C. § 103(a) over the combined teachings of U.S. Patent Publication No. 2002/0104097 to Jerding et al. ("Jerding") and U.S. Patent Publication No. 2002/0116706 to Bahraini ("Bahraini").

(2) Claims 2 and 10 were rejected as unpatentable over the combined teachings of Jerding, Bahraini and U.S. Patent No. 5,883,901 to Chiu et al. ("Chiu").

Because claims 1, 2, 9, 10, 17 and 20 have been cancelled, the rejections as to those claims are moot. Accordingly, the issue presented on this appeal is whether the remaining claims, claims 3-8, 11-16, 18, 19 and 21-28, are patentable under 35 U.S.C. § 103(a) over the combined teachings of Jerding and Bahrain.

VII. Argument

Claims 23-27:

Claim 23 recites:

A set-top unit for connection to a cable television system comprising:
a control channel tuner;
at least one programming tuner; and
a processor for controlling both said tuners;
wherein said processor is configured to concurrently control both said control channel tuner and said at least one programming tuner to scan a frequency band to locate a control channel.

(emphasis added).

In contrast, the combination of Jerding and Bahraini fails to teach or suggest using two tuners concurrently, a control channel tuner and a programming tuner, to locate a control channel. As represented by the Office, Jerding teaches a set-top including two tuners, and Bahraini teaches using a single tuner to scan for a control channel. However, neither reference teaches or suggests a set-top unit that includes and concurrently uses two tuners to scan a frequency band to locate a control channel, as claimed.

The recent Advisory Action of November 2, 2004 agrees that “neither Jerding nor Bahraini show controlling the [two] tuners concurrently.” Consequently, the Advisory Action takes official notice “that is it well known and expected in the art to control two tuners at the same time.” Even if this were true, it does not mean that it is well known in the art to control two tuners concurrently *to locate a control channel* as claimed.

However, it is not true that it is well-known to use two similar tuners concurrently, both of which can search for a control channel as claimed. In support of the Official Notice taken, the Advisory Action cites new prior art, namely, U.S. Patent No. 6,807,676 to Robbins et al. (“Robbins”). Robbins, however, as cited in the Advisory Action, teaches a video tuner

(120) and a digital *audio* tuner (202) that are used simultaneously. The audio tuner (202) is in a separate module, while the video tuner (120) is part of a set-top terminal (112). The audio tuner (202) would not be capable of locating or tuning a control channel in a cable television system. Thus, Robbins *cannot* support the position that it would have been obvious to concurrently use two similar tuners as claimed. More importantly, Robbins does not teach or suggest concurrently using two similar tuners in a set-top unit *to locate a control channel* as claimed.

The simple fact is that no prior art of record teaches or suggests the claimed set-top unit that includes two tuners and that uses those tuners concurrently to locate a control channel in a cable television system. The Office has failed to indicate how or where the cited prior art teaches using two tuners concurrently to locate a control channel as claimed.

The Office concedes that Jerding and Bahraini do not teach concurrent use of two tuners. Robbins simply teaches the concurrent use of two different types of tuners, a single video tuner and an audio tuner in a separate module.

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j). For at least this reason, the rejection of claims 23-27 should not be sustained.

Claims 28-29:

Claim 28 recites:

A set-top unit for connection to a cable television system comprising:
a control channel tuner;
two or more programming tuners; and
a processor for controlling said tuners;

wherein said processor is configured to concurrently control said programming tuners to scan a frequency band to locate a control channel.

As demonstrated above, the combination of Jerding, Bahraini and Robbins fails to teach or suggest using two or more tuners *concurrently* to scan a frequency band to locate a control channel, as claimed. Again, "[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j). For at least this reason, the rejection of claims 28 and 29 should not be sustained.

Claims 6-8, 14-16, 19 and 22:

Claim 6 recites:

A set-top unit for connection to a cable television system comprising:
a control channel tuner;
at least one programming tuner; and
a processor for controlling said tuners;
wherein said processor controls said at least one programming tuner to scan a frequency band to locate a control channel;
wherein said processor divides said frequency band among said control channel tuner and said at least one programming tuner, and controls each said tuner to search a different portion of said frequency band for said control channel.
(emphasis added).

Claims 14, 19 and 22 recite similar subject matter.

Thus, these claims, as exemplified by claim 6, again recite that two similar tuners, a control channel tuner and a programming tuner, are used together to locate a control channel. The frequency band to be searched is divided among the two tuners so that the search can be completed more quickly.

As demonstrated above, the combination of Jerding, Bahraini and Robbins fails to teach or suggest concurrently using two tuners to search for a control channel. The

combination further fails to teach or suggest dividing a frequency band among the two tuners as described in claim 6.

In response, the Advisory Action again resorts to taking Official Notice that it is well known to split up a task among similar components to facilitate processing. This, however, is irrelevant. The combination of references cited does not teach or suggest using multiple similar components to conduct a single task, e.g., searching for a control channel. Thus, even if the Official Notice taken is given credit, the prior art still does not teach or suggest a processor that divides a frequency band among two similar tuners in a search for a control channel.

In support of the Official Notice taken, the Advisory Action cites U.S. Patent No. 5,220,580 to Heberle et al. ("Heberle"). However, Heberle does not teach or suggest dividing up a frequency band among two tuners in the search for a control channel. Heberle rather teaches synchronization of a phase-locked loop. Thus, if the teachings of Heberle were combined with those of Jerding, Bahraini and Robbins, the combination still would not teach or suggest dividing a frequency band among multiple tuners that are concurrently controlled to search for a control channel in that frequency band, as claimed.

Again, "[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j). For at least this reason, the rejection of claims 6-8, 14-16, 19 and 22 should not be sustained.

Claims 3-5, 11-13, 18 and 21:

Claim 3 recites:

A set-top unit for connection to a cable television system comprising:

a control channel tuner;
at least one programming tuner; and
a processor for controlling said tuners;
wherein said processor controls said at least one programming tuner to scan a frequency band to locate a control channel;
wherein said processor controls said at least one programming tuner to tune frequencies in said frequency band and identify frequencies carrying an active signal; and
wherein said processor controls said control channel tuner to tune said frequencies carrying an active signal to locate said control channel.
(emphasis added).

Claims 11, 18 and 21 recite similar subject matter.

Thus, these claims, as exemplified by claim 3, again recite that two tuners, a control channel tuner and a programming tuner, are used together to locate a control channel. One tuner is used to search for frequencies carrying an active signal, while the second tuner is used to tune those frequencies with active signals to determine which is a control channel.

As demonstrated above, the combination of Jerding, Bahraini and Robbins fails to teach or suggest using two tuners to search for a control channel. The combination further fails to teach or suggest using the two tuners as described in claim 3, one to search for active signals and one to determine if an active signal, once located, is a control channel.

The Advisory Action likewise fails to indicate how or where the prior art teaches this subject matter. As noted above, Jerding teaches a set-top including two tuners, and Bahraini teaches using a single tuner to scan for a control channel. Nowhere does this combination teach or suggest using two tuners concurrently, let alone using one to find active signals and the second to follow up to determine if any of the active signals are control channels.

Again, "[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j). For at least this reason, the rejection of claims 3-5, 11-13, 18 and 21 should not be sustained.

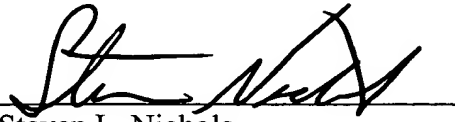
In none of the foregoing rejections has the Office succeeded in making out a *prima facie* case of unpatentability. Each of the rejections made relies, fatally, on ineffective Official Notice, inaccurate arguments of inherency and general attempts to read subject matter into the cited prior that is not, in fact, taught or suggested. It is incumbent upon the office to identify where in the cited prior art *each* claimed element may be found. *Ex parte Levy*, 17 U.S.P.Q.2d 1461 (BPAI 1990). Consequently, when the Office fails to identify a claimed element, the Office has failed to establish a *prima facie* case of unpatentability.

In the present case, the cited prior art does not anywhere teach or suggest the concurrent use of two tuners to locate a control channel. The cited prior art does not anywhere teach or suggest dividing a frequency band among two concurrently-operating tuners to locate a control channel. The cited prior art does not teach or suggest using one tuner to locate active frequencies and a second tuner to determine whether those active frequencies carry a control channel.

In view of the foregoing, it is submitted that the final rejection of the pending claims is improper and should not be sustained. Therefore, a reversal of the Final Rejection of June 16, 2004 is respectfully requested.

Respectfully submitted,

DATE: 17 January 2005



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Rebecca R. Schow

VIII. CLAIMS APPENDIX

1-2. (cancelled)

3. (previously presented) A set-top unit for connection to a cable television system comprising:

a control channel tuner;

at least one programming tuner; and

a processor for controlling said tuners;

wherein said processor controls said at least one programming tuner to scan a frequency band to locate a control channel;

wherein said processor controls said at least one programming tuner to tune frequencies in said frequency band and identify frequencies carrying an active signal; and

wherein said processor controls said control channel tuner to tune said frequencies carrying an active signal to locate said control channel.

4. (original) The set-top unit of claim 3, wherein, if said control channel is not found at one of said frequencies carrying an active signal, said processor controls said control channel tuner to tune frequencies in said frequency band until said control channel is located.

5. (original) The set-top unit of claim 3, wherein:
said at least one programming tuner comprises two programming tuners; and

said processor divides said frequency band between said two programming tuners and controls said two programming tuners to tune frequencies in different portions of said frequency band to identify frequencies carrying an active signal.

6. (previously presented) A set-top unit for connection to a cable television system comprising:

a control channel tuner;

at least one programming tuner; and

a processor for controlling said tuners;

wherein said processor controls said at least one programming tuner to scan a frequency band to locate a control channel;

wherein said processor divides said frequency band among said control channel tuner and said at least one programming tuner, and controls each said tuner to search a different portion of said frequency band for said control channel.

7. (original) The set-top unit of claim 6, wherein:

said at least one programming tuner comprises first and second programming tuners;
and

said processor divides said frequency band among said control channel tuner and said first and second programming tuners, and control each said tuner to search a different portion of said frequency band for said control channel

8. (original) The set-top unit of claim 6, wherein each tuner provides a signal at each tuned frequency to said processor for a determination as to whether said signal is said control channel.

9-10. (cancelled).

11. (previously presented) A method for acquiring a control channel of a cable television system with a set-top unit connected to said cable television system by controlling at least one programming tuner of said set-top unit to scan a frequency band to locate said control channel, said method comprising:

controlling said at least one programming tuner to tune frequencies in said frequency band and identify frequencies carrying an active signal; and

controlling a control channel tuner to tune said frequencies carrying an active signal to locate said control channel.

12. (original) The method of claim 11, wherein, if said control channel is not found at one of said frequencies carrying an active signal, said method further comprises controlling a control channel tuner to tune frequencies in said frequency band until said control channel is located.

13. (original) The method of claim 12, wherein said at least one programming tuner comprises two programming tuners; and said method further comprises dividing said frequency band between said two programming tuners and controlling said two programming

tuners to tune frequencies in different portions of said frequency band to identify frequencies carrying an active signal.

14. (previously presented) A method for acquiring a control channel of a cable television system with a set-top unit connected to said cable television system by controlling at least one programming tuner of said set-top unit to scan a frequency band to locate said control channel, said method comprising:

dividing said frequency band among a control channel tuner and said at least one programming tuner; and

controlling each said tuner to search a different portion of said frequency band for said control channel.

15. (original) The method of claim 14, wherein said at least one programming tuner comprises first and second programming tuners; and said method further comprises:

dividing said frequency band among said control channel tuner and said first and second programming tuners; and

controlling each said tuner to search a different portion of said frequency band for said control channel

16. (original) The method of claim 15, further comprising:

providing a signal from each tuner at each tuned frequency; and

determining whether said provided signal is said control channel.

17. (cancelled)

18. (previously presented) A set-top unit for connection to a cable television system comprising:

first tuning means for tuning a control channel;

second tuning means for tuning a frequency in a composite signal from said cable television system independently of said first tuning means; and

processing means for controlling said tuning means;

wherein said processing means controls said second tuning means to scan a frequency band to locate said control channel;

wherein said processing means controls said second tuning means to tune frequencies in said frequency band and identify frequencies carrying an active signal; and

wherein said processing means controls said first tuning means to tune said frequencies carrying an active signal to locate said control channel.

19. (previously presented) A set-top unit for connection to a cable television system comprising:

first tuning means for tuning a control channel;

second tuning means for tuning a frequency in a composite signal from said cable television system independently of said first tuning means; and

processing means for controlling said tuning means;

wherein said processing means controls said second tuning means to scan a frequency band to locate said control channel; and

wherein said processing means divides said frequency band among said first and second tuning means, and controls each said tuning means to search a different portion of said frequency band for said control channel.

20. (cancelled)

21. (previously presented) Computer-readable instructions stored in a medium for recording computer-readable instructions in a set-top unit for connection to a cable television system, the instructions causing a processor of said set-top unit to control at least one programming tuner of said set-top unit to scan a frequency band to locate said control channel;

wherein said instructions further cause said processor to:

control said at least one programming tuner to tune frequencies in said frequency band and identify frequencies carrying an active signal; and

control a control channel tuner to tune said frequencies carrying an active signal to locate said control channel.

22. (previously presented) Computer-readable instructions stored in a medium for recording computer-readable instructions in a set-top unit for connection to a cable television system, the instructions causing a processor of said set-top unit to control at least one programming tuner of said set-top unit to scan a frequency band to locate said control channel;

wherein said instructions further cause said processor to:

divide said frequency band among a control channel tuner and said at least one programming tuner; and

control each said tuner to search a different portion of said frequency band for said control channel.

23. (previously presented) A set-top unit for connection to a cable television system comprising:

a control channel tuner;

at least one programming tuner; and

a processor for controlling both said tuners;

wherein said processor is configured to concurrently control both said control channel tuner and said at least one programming tuner to scan a frequency band to locate a control channel.

24. (previously presented) The set-top unit of claim 23, further comprising a memory unit, wherein said processor, before controlling said tuners to scan a frequency band to locate a control channel, checks said memory unit for a last known frequency at which said control channel was broadcast.

25. (previously presented) The set-top unit of claim 23, wherein:

said processor is configured to control said at least one programming tuner to tune frequencies in said frequency band and identify frequencies carrying an active signal; and

said processor is configured to control said control channel tuner to tune said frequencies carrying an active signal to locate said control channel.

26. (previously presented) The set-top unit of claim 25, wherein, if said control channel is not found at one of said frequencies carrying an active signal, said processor controls said control channel tuner to tune frequencies in said frequency band until said control channel is located.

27. (previously presented) The set-top unit of claim 23, wherein said processor divides said frequency band among said control channel tuner and said at least one programming tuner, and controls each said tuner to search a different portion of said frequency band for said control channel.

28. (previously presented) A set-top unit for connection to a cable television system comprising:
a control channel tuner;
two or more programming tuners; and
a processor for controlling said tuners;
wherein said processor is configured to concurrently control said programming tuners to scan a frequency band to locate a control channel.

29. (previously presented) The set-top unit of claim 28, wherein said processor is configured to further control said control channel tuner to scan said frequency band to locate said control channel, wherein said control channel tuner and said programming tuners concurrently scan different portions of said frequency band to locate said control channel.

IX. Evidence Appendix

None

X. Related Proceedings Appendix

None

XI. Certificate of Service

None